Filed 6/11/07 In re Mevlin W. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re MELVIN W., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. MELVIN W., Defendant and Appellant.	A112498 (San Mateo County Super. Ct. No. JV71240)

Appellant Melvin W. appeals from a dispositional order of the San Mateo County Juvenile Court (San Mateo court) committing him to the California Department of the Youth Authority (CYA)[1] for a maximum confinement period of six years six months. He contends that the juvenile court abused its discretion in committing him to the CYA because the evidence does not establish that a CYA commitment would benefit him, or that less restrictive alternatives were inappropriate or unavailable. Appellant also claims that his dispositional hearing should not have taken place before the San Mateo court because his case had been erroneously transferred to the San Mateo court by the Solano County Juvenile Court (Solano court), and that it was further error for the San Mateo court to refuse to transfer the case back to the Solano court. We affirm.

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[1] We note that effective July 1, 2005, the CYA was redesignated the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. (Welf. & Inst. Code, §§ 1710, subd. (a), 1703, subd. (c).) For convenience we will continue to refer to the Division of Juvenile Facilities as the CYA.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Wardship Petitions

Appellant was 16 years old at the time of the felony offenses underlying this appeal. Appellant's mother lived in Daly City and his father lived in Vallejo. Pursuant to a 1997 custody agreement, appellant's parents had joint legal custody, with his father having physical custody. The instant Welfare and Institutions Code[2] section 602 petition had been the fourth wardship petition filed in two years.

The record before us contains little information regarding appellant's first two wardship petitions (§ 602). Additionally, the information that is included in the record is somewhat incomplete and vague as to these petitions. According to the October 2005 dispositional report regarding the current petition, appellant first became a ward of the juvenile court at the age of 14, when the San Mateo court sustained a charge of petty theft (Pen. Code, §§ 484, 488) in May 2003. Appellant was placed on probation under the care of his mother. In January 2004, this case was transferred to Solano County, where appellant successfully completed his probation.

The October 2005 dispositional report further states that, in June 2003, a second wardship petition (§ 602) was filed in San Francisco County, alleging that appellant committed automobile theft (Veh. Code, § 10851) and drove without a license (Veh. Code, § 12500, subd. (a)). The San Francisco Juvenile Court (San Francisco court) ordered appellant to serve five consecutive weekends of therapeutic detention in juvenile hall. Appellant also received 30 days of stayed therapeutic detention in juvenile hall. The record is unclear whether this case was also transferred to Solano County. For example, although the October 2005 dispositional report reflects that this case was transferred to Solano County in December 2003, the record does not contain any transfer orders from the San Francisco court to the Solano court during this time period.

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[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In June 2005, a third wardship petition (§ 602) was filed in San Mateo County, alleging that appellant possessed a check belonging to another person (Pen. Code, § 475); feloniously appropriated lost property (Pen. Code, §§ 485, 487); falsely identified himself to a police officer (Pen. Code, § 148.9, subd. (a)); and possessed a controlled substance (Health & Saf. Code, § 11377, subd. (a)). Appellant admitted to falsely identifying himself and possessing a controlled substance, and the remaining allegations were dismissed. The San Mateo court adjudged appellant a ward of the court and placed him on probation in the home of his parents.

B. Current Wardship Petition

1. Intercounty Transfers

On August 25, 2005, a fourth wardship petition (§ 602) was filed in San Francisco County, alleging that appellant committed the following offenses: second degree robbery (Pen. Code, §§ 211, 212.5); assault with a deadly weapon or by force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)); false imprisonment (Pen. Code, § 236); carrying a concealed firearm (Pen. Code, § 12025, subd. (a)(2)); possession of a concealable weapon by a minor (Pen. Code, § 12101, subd. (a)(1)); and possession of live ammunition by a minor (Pen. Code, § 12101, subd. (b))(1)). At the time of the offenses, appellant had been living with his father in Vallejo during the week and with his mother in Daly City during the weekends.

At the contested jurisdictional hearing held on September 13, 2005, appellant admitted to one felony count of second degree robbery (Pen. Code, §§ 211, 212.5), and one felony count of carrying a concealed firearm (Pen. Code, § 12025, subd. (a)(2)). The remaining counts were dismissed. The San Francisco court then ordered the case transferred to Solano County, after finding that appellant's legal residence was with his father in Vallejo.

On September 20, 2005, the Solano court accepted the transfer-in from the San Francisco court. At the same time, the Solano court then ordered the case transferred to San Mateo County, after finding that appellant's legal residence was with his mother in

Daly City. No objection was made by appellant to the transfer, or to the failure to schedule a separate transfer-out hearing.

On September 23, 2005, the San Mateo court accepted the transfer-in of appellant's case from the Solano court, denied appellant's request to transfer the case back to Solano County, and continued the case for a dispositional hearing.

2. Underlying Offenses and Dispositional Recommendation

According to the probation department's dispositional report,[3] on the evening of August 23, 2005, appellant, along with four other minor suspects, approached the victim as he was walking on Dolores Street in San Francisco. One of the suspects said, " 'You're slipping bro, you're slipping.' " The group then surrounded the victim and pushed him into a recessed area. They all started grabbing at the victim's pockets and punching at his head. One suspect demanded the victim's wallet. As the victim relinquished his wallet, another suspect took his cellular phone. The victim estimated that he was struck five or more times. He sustained multiple bumps and bruises to his head and face, as well as a small laceration to his left temple. The property stolen from the victim included a digital music player worth approximately $100, a cellular phone worth approximately $100, and a leather wallet, containing between $160 to $180 (in multiples of $20), together with four credit cards, a debit card, and numerous personal identification cards.

After his assailants fled, the victim walked home and his fiancée called the police. The victim provided a description of the suspects. While taking the victim's statement, the responding police officer told the victim that a group of five individuals matching the suspects' description had been detained at a nearby location. The victim was brought to

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[3] The dispositional report derives its facts from San Francisco Police Department report No. 50948591, which is not otherwise included in the record on appeal.

the location, and he recognized four out of the five young men as his attackers.[4] Appellant was one of the suspects taken into custody.

At the police station, a search of appellant's person and belongings revealed various personal property belonging to the victim. Specifically, two of the victim's personal identification cards were found in appellant's mouth. Additionally, the victim's wallet, along with $120 (in multiples of $20) was found in appellant's pocket. The victim's cellular phone was found in appellant's backpack. Appellant's backpack also contained a .38-caliber handgun, an ammunition clip containing six bullets, a loose bullet, and $46 (in various denominations).

A week after the attack, the victim submitted a statement in which he reported that he sustained several bumps and bruises to his face and head. The victim sought treatment at a hospital emergency room, but no serious injuries were detected. However, the victim reported that a week after the attack he was still experiencing jaw pain and was having trouble concentrating at work and being around large groups of people.

The probation department's initial dispositional report recommended that appellant's case be transferred back to Solano County because his father, who had the legal right of custody, resided in that county. However, based on the family dynamics, out-of-home placement was required.

The report indicated that if appellant's case were sent back to Solano County, there was a "good chance" that appellant would be committed to a residential county facility for boys. In the event appellant were to remain a ward of the San Mateo court, the report recommended commitment to Camp Glenwood.

According to the report, a prior mental health evaluation indicated that appellant had a pattern of impulsive, aggressive, and defiant behavior that had occurred at home, at school, and in the community. Additional psychological testing also revealed that

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[4] The dispositional report does not indicate whether the victim identified appellant as one of his attackers. However, at the jurisdictional hearing, the victim had expressly testified that appellant was part of the group that attacked him; he further testified that he was able to quickly identify appellant without any hesitation.

appellant had significant deficiencies in his ability to manage stress and that his intense emotional reactions created a significant risk of volatile behavior.

In an addendum report, the probation department recommended that appellant be committed to Camp Glenwood for a full program, without early release, based on appellant's prior record and current offense. The report stated that appellant had engaged in escalating negative behavior that was "predatory in nature."

3. Dispositional Hearing

At the contested dispositional hearing held on November 18, 2005, appellant testified that on the date of the underlying offenses he had been in San Francisco to buy some new shoes for school. While on a bus, appellant ran into some acquaintances. According to appellant, he and his acquaintances "happened" to get off at the same stop. They all started walking in the same direction, when they came upon the victim, who appellant described as being in "the wrong place." Appellant saw one of the boys get in the victim's face and say, " 'You're slipping.' " Appellant did not know what this phrase meant. Appellant said another person in the group hit the victim, and the group began "beating him up." When asked who was beating the victim, appellant initially replied, "All of us was together . . . ." However, appellant immediately revised his testimony, stating that only two members of the group hit the victim. Appellant denied touching the victim, and said his only involvement in the incident was picking up the victim's wallet off of the ground. Appellant further denied planning the robbery with the other boys. Appellant testified that he had the gun with him because he had been robbed twice before. According to appellant, the boys in the group did not know that he had the gun with him. Appellant said that he felt sorry for the victim after the attack.

On cross-examination, appellant admitted that he took the gun from his house on the day of the robbery. However, he denied intending to load or use the gun. Rather, he maintained that he brought the gun with him for protection. Appellant also acknowledged that he never tried to stop the attack. Appellant explained that he feared that he might have been beaten up by the group if he had tried to stop the attack.

Appellant's father, Melvin W., Sr., confirmed that he owned the gun found in appellant's backpack. He admitted that he kept the gun in his bedroom dresser. Mr. W. thought that appellant had unloaded the gun based on the location of the clip in a separate compartment of appellant's backpack. Mr. W. was aware that appellant had been victimized in the past. Mr. W. did not think he needed to change the way he parented appellant.

Appellant's probation officer testified that she had no reason to disbelieve appellant's version of the events. The probation officer reaffirmed the recommendation that appellant be committed to Camp Glenwood. When asked whether Camp Glenwood was appropriate for "the worst of the criminally oriented," she responded that the program was designed for people with a "[r]ange of behaviors." The probation officer agreed that the CYA would be more suitable for individuals committing "the most serious of offenses." The probation officer admitted that she "probably should have" contacted the CYA about possible programs for appellant, but she failed to do so.

The San Mateo court believed appellant was telling the truth about being robbed in the past. The court opined that appellant's prior victimization made his conduct in this case "even worse." The court stated: "You know how bad it feels to have people take something . . . [from] you by force. And yet on this day according to you in the most innocent scenario you stood by and watched four people descend on this man like a pack of jackals and beat him and rob him. You had the means in your backpack to stop that. You had a gun if they didn't listen to you. If you yelled[,] 'Stop that. Don't hurt him.' If they didn't stop you could have held up an empty gun and said[,] 'Stop,' and they would have stopped. That's the best scenario."

The court disbelieved appellant's version of the current offenses, stating the more realistic scenario was that he actively participated in the robbery. The court believed the victim's statement that he was attacked by all five of the young men.

The court stated that appellant was "simply too dangerous" to be placed in a local program. Based on prior failed interventions and appellant's escalating criminal behavior, the court determined that a CYA commitment was appropriate. In so ruling,

the San Mateo court concluded that the fact that appellant felt sorry for the victim only after the attack demonstrated a total lack of empathy. The court found this lack of empathy to be consistent with appellant's prior mental health evaluations, which the court judicially noticed. Addressing appellant, the court stated, "[Y]ou are a person who's had interventions. You are still victimizing people and you don't have a moral compass or conscience or whatever we want to call it, a heart, that tells you that you are causing suffering. The fact that you had that gun and that clip to me makes your conduct so egregious the only place I can send you to protect society and hope to redeem you and your behavior and rehabilitate you is the [CYA]." The San Mateo court then committed appellant to the CYA for a maximum confinement period of six years six months.

II.

DISCUSSION

A. CYA Commitment

Appellant claims that the San Mateo court (hereinafter the juvenile court) abused its discretion in committing him to the CYA because there is insufficient evidence to establish that he would benefit from such a commitment or that other less restrictive alternatives were appropriate.

1. Standard of Review and Applicable Law

The juvenile court has broad discretion in determining the appropriate rehabilitative and punitive measures for offenders. (§ 202; *In re Asean D.* (1993) 14 Cal.App.4th 467, 473; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) An appellate court will not lightly substitute its judgment for that of the juvenile court, but rather must indulge all reasonable inferences in favor of the decision and affirm the decision if it is supported by substantial evidence. (*In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.) Substantial evidence is evidence that is " 'reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.' [Citation.]" (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 942.)

Questions of the weight of the evidence and the credibility of witnesses are the province of the trial court. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

In determining whether substantial evidence supports a CYA commitment, we examine the record presented at the dispositional hearing in light of the purposes of the juvenile law. (§ 202; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.) Since 1984, section 202 has required that courts commit delinquent minors "in conformity with the interests of public safety and protection, [to] receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances." (§ 202, subds. (b), (e)(5); *In re Lorenza M.* (1989) 212 Cal.App.3d 49, 57-58; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) Although the 1984 amendment places a greater emphasis on punishment and societal protection, rehabilitation remains a critical objective of juvenile law. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) To commit a minor to the CYA, the juvenile court must be "fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the [CYA]." (§ 734.) Accordingly, the rehabilitative purposes of a CYA commitment are satisfied when there is (1) evidence in the record demonstrating probable benefit to the minor, and (2) evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate. (*In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 576; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.)

2. The Juvenile Court Did Not Abuse its Discretion in Committing Appellant to the CYA

a. Probable Benefit

There is no rigid test for determining whether a commitment to the CYA would benefit a minor. (See, e.g., *In re Martin L.* (1986) 187 Cal.App.3d 534, 543-544.) Instead, the court must consider the individual circumstances in light of the potential reformative, educational, rehabilitative, treatment, and disciplinary benefits the CYA may provide to the minor. (See §§ 202, 734; *In re Gerardo B.* (1989) 207 Cal.App.3d 1252,

1258-1259.) Factors include the minor's age, the seriousness of the minor's criminal conduct, the minor's mental and physical needs, the minor's prior record, the extent of the minor's need for a controlled environment, the threat the minor poses to the community, and the efficacy of prior dispositions in rehabilitating the minor. (See §§ 202, 734; *In re Gerardo B.*, *supra*, 207 Cal.App.3d at pp. 1258-1259 & fn. 3; *In re Anthony M.* (1981) 116 Cal.App.3d 491, 503-505; *In re Jesse McM.* (1980) 105 Cal.App.3d 187, 191-193.) In determining whether commitment to the CYA would be of benefit to the minor, the court may also consider "punishment as a rehabilitative tool;" however, a minor should not be committed to the CYA solely on retributive grounds. (§ 202, subd. (e)(5); *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) Rather, the juvenile court must focus on both the need for public protection and the best interests of the minor. (§ 202; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.)

Here, appellant was 17 years old when he was committed to the CYA. His criminal history included petty theft, automobile theft, possession of a controlled substance, robbery, and carrying a concealed weapon. A prior mental health evaluation indicated that appellant had a pattern of impulsive, aggressive, and defiant behavior that had occurred at home, at school, and in the community. Additional psychological testing also revealed that appellant had significant deficiencies in his ability to manage stress and that his intense emotional reactions created a significant risk of volatile behavior. He also apparently suffered from some substance abuse problems,[5] and the most recent attempt to control his behavior by keeping him in the community failed.

Seeking to minimize his criminal history, appellant asserts that he has engaged in only minor, nonviolent offenses. He characterizes the underlying offense as "an impulsive crime of opportunity[,] which, while serious, was not so egregious as to preclude [his] placement in a local facility." While it is true that appellant's offenses

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[5] Appellant denies having any "serious drug or alcohol problems." However, the record belies this contention. He has a sustained charge of possession of a controlled substance and has tested positive for marijuana on at least one occasion.

were not criminally sophisticated, they were not insignificant. In fact, the record reflects that appellant's delinquent behavior was escalating and his offenses were becoming more violent. (See, e.g., *In re Eugene R.* (1980) 107 Cal.App.3d 605, 615, 617-618, disapproved on other grounds in *In re Ricky H.* (1981) 30 Cal.3d 176, 185-190 [commitment justified by progressive criminality of prior record, ineffectiveness of alternative rehabilitative placements, and juvenile's violent and hostile behavior]; *In re Willy L.* (1976) 56 Cal.App.3d 256, 263-264 [pattern of delinquent behavior, including burglary and drug offenses].)

Appellant disputes his role in the robbery, claiming that there was no credible evidence that he struck the victim or that he intended to load and use the gun against the victim. Appellant's argument is not persuasive. The juvenile court, which had the opportunity to assess the credibility and demeanor of the witnesses at the contested disposition hearing, disbelieved appellant's version of the events. As set forth above, it is not within our province to reweigh the evidence and the credibility of the witnesses. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.) In any event, the nature of the offenses is but one factor for the juvenile court to consider in making its disposition. (*In re Tyrone O.* (1989) 209 Cal.App.3d 145, 152.)

Appellant further contends that the juvenile court abused its discretion in relying on the fact that he did not use the gun to stop the attack. While we disapprove of the juvenile court's suggestion, nothing in the record indicates that the juvenile court improperly focused on appellant's failure to brandish the gun and stop the attack as a basis for committing him to the CYA. Rather, the record reflects that the juvenile court's decision to commit appellant to the CYA was based on his escalating criminal behavior and his failure to rehabilitate himself while in the community.

Appellant maintains that the juvenile court failed to engage in any particularized consideration of his rehabilitative needs, and whether (and how) those needs would be met at the CYA. Appellant has cited no authority that imposes a requirement on a juvenile court to delineate with specificity the types of programs the court contemplates the minor needs in order to achieve rehabilitation. Indeed, that is the function of the

CYA, and those needs may change over the period of confinement. Although it is true that at the dispositional hearing the juvenile court did not expressly state why it thought appellant would probably benefit from a CYA commitment, it is clear from this record that appellant's mental and physical condition and qualifications render it probable that he will benefit from the reformatory discipline or other treatment provided by the CYA. (§ 734.) The "CYA, with its specialized institutions and rehabilitative programs tailored to the delinquent's sophistication and need for security [citation] offered the promise of probable rehabilitative benefit to [appellant]." (*In re Tyrone O.*, *supra*, 209 Cal.App.3d at p. 153.) The juvenile court did not abuse its discretion in finding that appellant would benefit from the programs offered by the CYA.

b. Less Restrictive Alternatives

To justify the conclusion that lesser disposition options would be unsuitable for a minor, there must merely be some evidence that alternatives were considered, and that a CYA commitment would best lead to the rehabilitation of the minor and protection of society. (*See In re Ricky H.*, *supra*, 30 Cal.3d at pp. 182-184, superseded on other grounds by statute as stated in *In re Michael G.* (1988) 44 Cal.3d 283, 298; *In re Asean D.*, *supra*, 14 Cal.App.4th at pp. 473-474; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396.) Thus, there is no requirement that a commitment to the CYA be used only as a last resort after all other alternatives have been tried and failed. (*In re Ricky H.*, *supra*, 30 Cal.3d at p. 183.)

Accordingly, California courts have upheld CYA commitments even for first-time offenders without first attempting a less restrictive placement where the circumstances demonstrate that such alternatives are inappropriate or unavailable. (See, e.g., *In re Ricky H.*, *supra*, 30 Cal.3d at p. 184 [minor's escape from juvenile hall by means of force and violence demonstrated that less restrictive placement would have failed]; *In re Asean D.*, *supra*, 14 Cal.App.4th at p. 471 [vicious attack on two victims during robbery; refusal to take responsibility for the crimes]; *In re Willy L.*, *supra*, 56 Cal.App.3d at pp. 264-265 [serious pattern of delinquent activity including burglary and drug offenses].) If there is evidence in the record showing that the court considered less

restrictive placements, the fact the judge does not state on the record his or her consideration of those alternatives and reasons for rejecting them will not result in reversal. (*In re Ricky H., supra*, 30 Cal.3d at p. 184; *In re Teofilio A., supra*, 210 Cal.App.3d at p. 577.)

Here, the decision of the juvenile court to commit appellant to the CYA fully comports with these legal principles, and we discern no abuse of discretion. Before ordering appellant committed, the juvenile court received two formal, written probation reports exploring the details of the incident and reciting the minor's social, personal, educational, behavioral, and family history.

Although appellant seeks to minimize his participation in the robbery, the brazenness and gravity of this offense are significant. There is substantial evidence that appellant, along with four other minors, participated in a violent robbery of an innocent victim. The victim reported that a week after the robbery he was still experiencing jaw pain, and was having trouble concentrating at work and being around large groups of people. This particular incident occurred in the early evening hours on a popular street in San Francisco, which had grave implications for the safety and protection of the public. When picked up by the police soon after the incident, appellant was found carrying an unloaded .38-caliber handgun, an ammunition clip containing six bullets, and one loose bullet.

The juvenile court determined that appellant was "simply too dangerous" to be kept in a local facility. The court further explained that despite previous interventions, appellant's conduct had progressively escalated. The instant offenses that appellant admitted were serious, and justified a conclusion that he represented a real and present danger to the community, requiring not only that he be kept in a locked facility, but that he receive programs designed to rehabilitate his behavior.

Nevertheless, appellant claims that the probation department did not recommend a CYA commitment, but recommended placement at Camp Glenwood. It has long been the rule in California that courts are not bound by the views of the probation department. (See, e.g., *In re Tyrone O., supra*, 209 Cal.App.3d at p. 153.) An appellant court must

indulge all reasonable inferences in favor of the disposition, and must affirm findings that are supported by substantial evidence. (*In re Asean D.*, *supra*, 14 Cal.App.4th at p. 473; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1395.) While not every judge may have chosen the CYA as the best disposition on this record, we conclude there was no abuse of discretion in doing so in this case.[6]

Lastly, we reject appellant's contention that the juvenile court improperly prejudged his case. In making this claim, appellant relies on the remark made by the juvenile court at the initial dispositional hearing: "In all honesty . . . I think this is a youth authority case, based on what I'm reading here. If you want to set it for [a] contested dispo[sition], that's your prerogative." Appellant argues that because the juvenile court made this remark before hearing any witnesses or receiving the final probation report, the comments suggest that the court paid little attention to evidence adduced at the contested dispositional hearing.

We disagree that the juvenile court's remarks indicate that it had improperly prejudged his case. Nothing in the record suggests that the juvenile court was inattentive to the testimony and evidence received at the subsequent dispositional hearing.

B. Intercounty Transfers

Appellant claims three separate errors relating to the transfer of his case from Solano County to San Mateo County, including: (1) the Solano court erred in transferring the case to the San Mateo court because appellant's legal residence was with his father in Solano County; (2) the Solano court failed to hold an adequate transfer-out hearing before transferring his case to the San Mateo court; and (3) the San Mateo court erred in failing to send his case back to the Solano court.

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[6] Appellant argues that various relevant factors militated against a CYA commitment, including that he came from "a relatively stable and supportive family" and had not been involved in any gang activity. Nothing in the record suggests that the juvenile court disregarded appellant's social and criminal history, when making its decision to commit him to the CYA.

Respondent argues that appellant has waived the first two issues by failing to object to the Solano court's transfer of his case to the San Mateo court. (See *In re Carlos B.* (1999) 76 Cal.App.4th 50, 55-56.) We agree.

Turning to the third transfer-related issue, we note preliminarily that the parties dispute the appropriate standard of review. Relying on *In re J.C.* (2002) 104 Cal.App.4th 984, 993, respondent argues that decisions involving intercounty transfers are reviewed for an abuse of discretion. *In re J.C.*, *supra*, involved numerous transfers between two juvenile courts in a dependency case involving four minor children. (*Id.* at p. 986.) In reviewing the receiving court's finding that the children's best interests were served by rejecting the transfer and sending the case back to the transferring court, the appellate court applied the abuse of discretion standard of review. (*Id.* at p. 993.) Here, appellant appears to concede that the abuse of discretion standard is appropriate for reviewing whether a transfer is in a minor's best interest, but argues that the only court with discretion to determine whether his best interests were served by a transfer was the San Francisco court. Appellant maintains that the abuse of discretion standard is inapplicable here because he is not challenging the propriety of the San Francisco court's decision to transfer his case to the Solano court. We disagree with appellant's assertion that the San Francisco court was the only court with discretion to determine his best interests.

Nonetheless, we agree that the abuse of discretion is not applicable to the extent we are required to engage in statutory interpretation, which is a question of law we review de novo. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 535.) However, to the extent we are required to examine the implied finding that appellant's best interests were served in the San Mateo court, the standard of review is abuse of discretion. (*In re J.C.*, *supra*, 104 Cal.App.4th at p. 993.)

Section 750, setting forth the conditions of intercounty transfers, provides: "Whenever a petition is filed in the juvenile court of a county other than the residence of the person named in the petition, or whenever, subsequent to the filing of a petition in the juvenile court of the county where such minor resides, the residence of the person who would be legally entitled to the custody of such minor were it not for the existence of a

court order issued pursuant to this chapter is changed to another county, the entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor, and the juvenile court of the county wherein such person then resides shall take jurisdiction of the case upon the receipt and filing with it of such finding of the facts and an order transferring the case."

The California Rules of Court[7] implementing section 750 are set forth in rules 5.610 (former rule 1425) and rule 5.612 (former rule 1426). "For purposes of rules 5.610 and 5.612, the residence of the child is the residence of the person who has the legal right to physical custody of the child according to prior court order . . . ." (Rule 5.610(a)(1).) Rule 5.610(c)(1)(A) provides that the court may order a case transferred to the juvenile court of the child's residence if the petition was filed in a county other than that of the child's residence. Rule 5.610(e) provides that "[a]fter the court determines the identity and residence of the child's custodian, the court must consider whether transfer of the case would be in the child's best interest. The court may not transfer the case unless it determines that the transfer will protect or further the child's best interest." Moreover, "[t]he order of transfer may be appealed by the transferring or receiving county and notice of appeal must be filed in the transferring county, under rule 8.400. Notwithstanding the filing of a notice of appeal, the receiving county must assume jurisdiction of the case on receipt and filing of the order of transfer." (Rule 5.610(i).)

Rule 5.612 provides, in pertinent part, as follows: "(a) . . . [¶] (1) On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case . . . [¶] (f) . . .[¶] If the receiving court believes that a change of circumstances or additional facts indicate that the child does not reside in the receiving county, a transfer-out hearing must be held under rules 5.610 and 5.570. . . ."

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[7] All further rule references are to the California Rules of Court.

With respect to the determination of a child's residence, section 17.1, subdivision (a) provides that "[t]he residence of the parent with whom a child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child." Section 17.1, subdivision (b) further provides that "[w]herever in this section it is provided that the residence of a child is determined by the residence of the person who has custody, 'custody' means the legal right to custody of the child unless that right is held jointly by two or more persons, in which case 'custody' means *the physical custody of the child by one of the persons sharing the right to custody.*" (Italics added.)

Both section 750 and rule 5.610(c)(1) provide that a court "may" transfer the case to the county of residency, implying that such transfer is not mandatory. (See § 15; see also *In re Carlos B.*, *supra*, 76 Cal.App.4th at p. 55 [discussing former rule 1425(e)].) Appellant concedes that transfer is permissive, but argues that the San Francisco court was the only court with discretion to decide whether to transfer his case. He further asserts that because the instant section 602 petition was not filed in San Mateo County and because he was not a resident of that county, the San Mateo court had "no basis upon which to keep jurisdiction" of his case. We disagree. The San Mateo court properly accepted jurisdiction of this case as required by rule 5.612(a)(1). Nothing in the rules of court or the juvenile court law *required* the San Mateo court to transfer the case to Solano County for disposition. "[J]urisdiction is not dependent upon residency." (*In re Carlos B.*, *supra*, 76 Cal.App.4th at p. 55.) Rather, as discussed in the preceding section, "residency is simply one factor in determining whether to transfer the case for disposition." (*Ibid.*)

The San Mateo court had before it the following facts. Appellant's case was transferred to San Mateo County based on his wardship in that county and his mother's address in Daly City. Appellant was adjudged a ward of the San Mateo court in May 2003 and again in July 2005. At the time of the underlying offense, appellant had been "placed on supervised probation in the home of his parents." Appellant lived with father

in Vallejo during week and with his mother in Daly City on weekends. Appellant's father commuted from Vallejo to San Francisco for work, and "manage[d]" to drop off appellant at school in Daly City. Appellant's sister then took care of him after school until his father completed his work day and picked up appellant for the return commute to Vallejo. The probation officer noted that it was "questionable whether this arrangement ha[d] been working."

Additionally, despite the evidence of appellant's escalating delinquent behavior, his father testified that that he saw no reason to modify the way he parented appellant. The probation officer concluded that a review of the family dynamics indicated that out-of-home placement was required.

On this record, we cannot say that the San Mateo court exceeded the bounds of reason (*In re J.C., supra*, 104 Cal.App.4th at p. 993), when it refused to transfer the case back to Solano County. The only reasonable inference that can be drawn from the facts of this case is that appellant's best interests required that he continued to be supervised in San Mateo County.

In sum, the San Mateo court's refusal to transfer the case to Solano County was neither error nor abuse of discretion.

III.

DISPOSITION

The judgment is affirmed.

_____
Ruvolo, P. J.

We concur:

_____
Reardon, J.

_____
Sepulveda, J.